

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:APJP:B2:AMielke
POSTNO-107874-06

date: April 7, 2006

to: Acting Director
Office of Professional Responsibility
Attn: Michael Hahn

Richard S. Holbert

from: Special Counsel to the Associate Chief Counsel
(Procedure & Administration)

subject: West Virginia Public Accountants

This memorandum responds to your inquiry regarding practice before the Service by West Virginia public accountants.

Issue

Whether individuals who hold current public accountant registrations in West Virginia, but who are not certified public accountants, are eligible to practice before the IRS by virtue of their public accountants' status?

Conclusion

Yes. The statute and regulations provide that an individual who is duly qualified to practice as a CPA in any state, territory, or possession of the United States or the District of Columbia may represent a person before the IRS. Under West Virginia law, a registered public accountant has the same rights and privileges as a certified public accountant. Thus, for purposes of Circular 230, a public accountant registered with the West Virginia Board of Accountancy is eligible to practice before the IRS by virtue of his public accountant's license.

Facts

Two categories of individuals may practice public accountancy in West Virginia: CPAs and public accountants. Further, any professional services required by law or regulation to be performed by a CPA may be performed by a CPA or public accountant. See W.Va. Code § 30-9-15 (2001). Currently, there are eighteen public accountants licensed in the State.

Law and Analysis

Section 500(c) of title 5 of the United States Code sets forth the general rules for practicing before the United States administrative agencies. This section provides that

PMTA: 00789

an individual who is duly qualified to practice as a CPA in a State may represent a person before the IRS by filing with the agency a written declaration that he is currently qualified as provided by this section and is authorized to represent the particular person in whose behalf he acts. The regulations governing practice before the IRS (Circular 230) mirror 5 U.S.C. § 500(c). Section 10.2(b) of Circular 230 defines a CPA, in relevant part, as any person who is duly qualified to practice as a CPA in any State. Section 10.3(b) further provides that any CPA who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS by filing with the IRS a written declaration that he or she is currently qualified as a CPA and is authorized to represent the party or parties on whose behalf he or she acts.

The decision to include CPAs within the class of professionals entitled to practice before the IRS by virtue of their State professional status is discussed in H.R. Rep. No. 1141, 89 Cong. Cong., 1st Sess. (October 25, 1965). In explaining why CPAs are not subject to the Service's admission procedures, the House noted:

[T] here is a presumption that members in good standing of the profession of . . . certified public accountancy are of good moral character, and that surveillance by . . . State associations of certified public accountants [sic] will sufficiently insure the integrity of practice by such persons before the Internal Revenue Service. The cumbersome admission procedures of the Internal Revenue Service seem unwarranted in their impact on duly qualified . . . certified public accountants.

Id. At 4.

Under West Virginia law, only individuals possessing a license¹ issued by the West Virginia Board of Accountancy (the Board) generally may practice public accountancy in the State.² See W.Va. Code § 30-9-1 (2001). The Board issues licenses to practice public accountancy to CPAs and public accountants. W.Va. Code §§ 30-9-7, 30-9-8 and 30-9-15 (2001).

A CPA is an individual who holds a certificate as a certified public accountant from the Board. W.Va. Code § 30-9-2(8) (2001). CPA certificates are issued to individuals who have met the requirements of good moral character, have satisfied certain educational requirements which include a set amount of accounting or business-related coursework,

¹ With respect to the regulation of the practice of accountancy, West Virginia defines "license" as a certificate as a certified public accountant, a permit to an accounting firm, registration as a public accountant or authorization to perform attest or compilation services, all of which are issued by the West Virginia Board of accountancy. W.Va. Code § 30-9-2(20)(2001).

² CPAs who hold a valid out-of-state certificate and whose principal place of business is not West Virginia may practice accountancy in West Virginia without the need to obtain a West Virginia certificate if the other state extends similar privileges to West Virginia CPAs and the West Virginia Board of Accountancy has determined that other state has substantially equivalent requirements to obtain a CPA-certificate or the CPA has substantially equivalent qualifications to the certification requirements of the uniform accountancy act. W.Va. Code § 30-9-16 (2001).

have passed the uniform certified public accountant examination, and have satisfied certain experience requirements. W.Va. Code § 30-9-8 (2001); W.Va. Code St. R. § 1.1.4 (2004).

The West Virginia Code provides for the issuance of one-year renewal certificates to engage in the practice of public accountancy as a certified public accountant. W.Va. Code § 30-9-12 (2001). Certificates to engage in the practice of public accounting may be renewed upon application provided the CPA has completed 120 hours of continuing education in a three-year renewal period. W.Va. Code §§ 30-9-12 (2001); W.Va. Code St. R. § 1.1.8 (2004).

A public accountant is any person who registered with the Board as a public accountant on or before January 1, 1967, and who holds a valid renewal of that registration. W.Va. Code § 30-9-2(30) and (32) (2001). A person registered as a public accountant is entitled to have the registration renewed subject to the same requirements and restrictions as those required for the renewal of a CPA certificate. W.Va. Code § 30-9-15 (2001).

Public accountants, like CPAs, may be disciplined and potentially lose their license to practice accountancy for any failure to comply with or any violation of the conduct provisions contained in the West Virginia Code. W.Va. Code § 30-9-20 (2001).

Accordingly, while the state of West Virginia no longer qualifies persons as public accountants, it will renew the registration of public accountants who held the authority to practice accounting in West Virginia on or before January 1, 1967. Public accountants can perform for compensation any, or all, of the professional services that can be performed by a CPA. Public accountants must meet the same continuing education requirements imposed on CPAs. Public accountants also must comply with the same ethical standards and are subject to the same disciplinary actions as CPAs. West Virginia law provides that public accountants have the same rights and privileges as CPAs. Thus, a person who holds authority as a public accountant and a current West Virginia public accountant's permit, is, for practical purposes, a CPA, and is, therefore, eligible to practice before the IRS.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions, please contact this office at 202-622-3400.

cc: Associate Chief Counsel (General Legal Services)
Attn: Kirsten Witter